

CONTRACT NO.
CONTROL SECTION:
JOB NO.
FED. PROJ. NO.
ITEM NO.
ACCT. NO.
AGENDA:

MICHIGAN DEPARTMENT OF TRANSPORTATION

CONTRACT

THIS CONTRACT is made and entered into this date of _____ by and between the Michigan Department of Transportation, hereinafter referred to as the "DEPARTMENT," and , of , hereinafter referred to as the "CONSULTANT."

WITNESSETH:

WHEREAS, the DEPARTMENT desires to engage the professional services of the CONSULTANT to ;

NOW, THEREFORE, the parties agree that:

THE CONSULTANT WILL:

1. Perform the work set forth in Exhibit A, dated , pages 1 through , attached hereto and made a part hereof, said work performed by the CONSULTANT to be hereinafter referred to as the "SERVICES."
2. Perform all SERVICES in conformity with the DEPARTMENT's applicable standards.
3. During the performance of the SERVICES herein defined, be responsible for any loss of or damage to original documents belonging to the DEPARTMENT while they are in the CONSULTANT's possession. Restoration of lost or damaged original documents will be at the CONSULTANT's expense.

4. Make such trips to confer with representatives of the DEPARTMENT and the United States Department of Transportation, Federal Highway Administration (FHWA), as may be necessary in the carrying out of the SERVICES set forth in this Contract.
5. Submit written Progress Reports to the DEPARTMENT that outline the work accomplished during the reporting period; identify any problems, real or anticipated, associated with the conduct of the SERVICES; and identify any deviations from the agreed upon work plan.
6. Prepare the graphics and text for all reports in a form suitable and acceptable to the DEPARTMENT, such suitability and acceptability to be determined by the DEPARTMENT. This Section is limited to the format of the graphics and text. Nothing herein is to be construed as allowing the DEPARTMENT to declare as unsuitable or unacceptable any of the graphics or text because of the conclusions arrived at by the CONSULTANT through analysis of data collected for this project.

As used throughout this Contract, the words “satisfactory” and “acceptance” are defined to mean that the product is in the format required and is completely in accordance with the contract requirements; however, it does not mean that the conclusions arrived at for this project must be approved or agreed to by the DEPARTMENT or the FHWA.

7. Prepare and submit to the DEPARTMENT a written preliminary copy of the Final Project Report in accordance with the work plan set forth in Exhibit A for its review and acceptance prior to submission of the Final Project Report. The DEPARTMENT will notify the CONSULTANT of its acceptance or rejection of the Final Project Report within sixty (60) days of receipt of same from the CONSULTANT.
8. Submit any proposed publication by the CONSULTANT or its subcontractors of the results of project work for prior review and acceptance by the DEPARTMENT. Such review and acceptance is for the DEPARTMENT’s own purposes and does not relieve the CONSULTANT from claims arising out of such publication. Said proposed publication will include proper credit for all parties to this Contract.
9. Permit representatives of the DEPARTMENT, the FHWA, and other authorized public agencies interested in the SERVICES to have full access to the SERVICES during the CONSULTANT’s performance.
10. With regard to audits and record-keeping,
 - a. The CONSULTANT will establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which

payment is sought or made under this Contract, said records to be hereinafter referred to as the "RECORDS." Separate accounts will be established and maintained for all costs incurred under this Contract.

- b. The CONSULTANT will maintain the RECORDS for at least three (3) years from the date of final payment made by the DEPARTMENT under this Contract. In the event of a dispute with regard to the allowable expenses or any other issue under this Contract, the CONSULTANT will thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.
 - c. The DEPARTMENT or its representative may inspect, copy, or audit the RECORDS at any reasonable time after giving reasonable notice.
 - d. If any part of the work is subcontracted, the CONSULTANT will assure compliance with subsections (a), (b), and (c) above for all subcontracted work.
11. If the DEPARTMENT discloses its confidential information to the CONSULTANT, the CONSULTANT will maintain such information as confidential. Information provided by the DEPARTMENT will be deemed confidential if it is marked confidential or stated in writing to be confidential. The above obligations of confidentiality will not apply to:
- a. Information for which the DEPARTMENT gives prior written permission for publication or use.
 - b. Information that is required to be disclosed based on court order.

A violation of this provision will be considered a breach of this Contract, and the DEPARTMENT may terminate this Contract under the provisions of Section 22 (b).

News releases pertaining to this Contract or the SERVICES to which it relates will not be made without prior written approval from the DEPARTMENT, and then only in accordance with explicit instructions from the DEPARTMENT. News releases made without the DEPARTMENT's approval will be considered a breach of the Contract, and the DEPARTMENT may terminate this Contract under the provisions of Section 22 (b).

12. Submit billings for SERVICES and a written progress report to the DEPARTMENT. The CONSULTANT agrees that the costs reported to the DEPARTMENT for this Contract will represent only those items that are properly chargeable in accordance with this Contract. The CONSULTANT also certifies that it has read the Contract terms and has made itself aware of the applicable laws, regulations, and terms of this Contract that apply to the reporting of costs incurred under the terms of this Contract.

THE DEPARTMENT WILL:

13. Furnish for the use of the CONSULTANT such DEPARTMENT standards and other information as may be needed, unless specifically required to be provided by the CONSULTANT in a particular instance.
14. Pay the CONSULTANT for the SERVICES after receipt of billings, subject to verification of progress. Compensation for the SERVICES will be on the basis of actual cost and a fixed fee and will not exceed , which amount includes a fixed fee of , as set forth in Exhibit A. The CONSULTANT will be responsible for all costs in excess of the DEPARTMENT and the FHWA funds shown above.

DEPARTMENT funds in this Contract made available through legislative appropriations are based on projected revenue estimates. The DEPARTMENT may reduce the amount of this Contract if the revenue actually received is insufficient to support the appropriation under which this Contract is made.

15. Determine that payment for costs of the SERVICES required and performed is in accordance with the following:
 - a. Direct Salary Costs: Actual labor costs of personnel performing the SERVICES. This cost will be based on the employees' actual hourly rates of pay and the actual hours of performance on the SERVICES as supported by employee time and earning records.
 - b. Other Direct Costs: Actual costs of materials and services as may be required hereunder but that are not normally provided as part of the overhead of the CONSULTANT. All actual costs will be itemized and certified as paid to specifically named firms or individuals and will be supported by proper receipts and proofs of payments.
 - c. Overhead and Indirect Costs: A pro-rated portion of the actual overhead and indirect costs incurred by the CONSULTANT during work. The amount of overhead payment, including payroll overhead, will be calculated as applied rates
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to direct labor costs, as set forth in Exhibit A. Overhead and indirect costs will include those costs that, because of their incurrence for common or joint objectives, are not readily subject to treatment as direct costs.
 - d. Subconsultant Costs: Actual costs of subconsultants performing SERVICES under this Contract. Amounts for fixed fees paid by the CONSULTANT to the

subconsultant will not be considered an actual cost of the CONSULTANT, but will be considered a part of the fixed fee of the CONSULTANT.

- e. Travel and Subsistence: Actual costs in accordance with and not to exceed the amounts set forth in the current State of Michigan Standardized Travel Regulations, incorporated herein by reference as if the same were repeated in full herein.
 - f. Fixed Fee: In addition to payments set forth under (a), (b), (c), (d), and (e) above, the DEPARTMENT agrees to pay the CONSULTANT a fixed fee. It is agreed and understood that such amount will constitute full compensation to the CONSULTANT for profit from SERVICES performed and will not vary because of any differences between the estimated cost and the actual cost. Overruns in the actual cost of the SERVICES will not warrant an increase or adjustment in the amount of the fixed fee. Adjustments in the fixed fee will only be allowed under the provisions of Sections 19 and 22 of this Contract.
 - g. Reimbursement for costs incurred is subject to the cost criteria set forth in 48 CFR, Federal Acquisition Regulations, Part 31, incorporated herein by reference as if the same were repeated in full herein.
 - h. The CONSULTANT will not be paid for costs attributable to correction of errors and omissions by the CONSULTANT.
16. Make payment to the CONSULTANT in accordance with the following:
- a. Progress payments may be made for reimbursement of amounts earned to date upon receipt of a billing and the written progress report. Progress payments will include direct salary costs, other direct costs, and calculated amounts for overhead using applied overhead rates, as herein set forth. The portion of the fixed fee that may be included in progress payments will be equal to the total fixed fee multiplied by the percentage of the work that has been completed to date of billing. Progress payments will not be made more than once a month.
 - b. Upon receipt by the DEPARTMENT of the required documents and any other

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accompanying information in a form satisfactory to the DEPARTMENT, the DEPARTMENT will process the payment request if the CONSULTANT is complying with its obligations pursuant to the contract. Reimbursement of any costs pursuant to this Section will not constitute a final determination by the DEPARTMENT of the allowability of such costs and will not constitute a waiver by the DEPARTMENT of any violation of the terms of this Contract committed by the CONSULTANT.

- c. The DEPARTMENT will withhold from each billing of the requested payment until completion of the SERVICES. Payment of the retainage will be made upon acceptance of the SERVICES and the satisfactory completion of an audit by the DEPARTMENT, but not later than one (1) year after the acceptance and the DEPARTMENT's receipt of the CONSULTANT's final billing.

Regardless of its costs, the CONSULTANT will not be entitled to compensation in excess of the maximum amount(s) set forth in Section 14 hereof.

17. When work occasioned at the DEPARTMENT's request is in addition to or other than work provided for by the express intent of this Contract, the DEPARTMENT will reimburse the CONSULTANT for all such work on the basis of actual costs incurred, as defined in Section 15, plus a predetermined lump sum amount for normal profit for such work. The performance of and payment for such work will require the submission of a proposal to perform the work and the award of a written amendment prior to beginning the work.

IT IS FURTHER AGREED THAT:

18. The parties will consider the SERVICES to be complete when accepted by the DEPARTMENT. Such acceptance by the DEPARTMENT is not intended to nor does it relieve the CONSULTANT of any of its obligations and responsibilities herein.
19. If the CONSULTANT deems that extra compensation is due it for work not clearly covered in this Contract, the CONSULTANT will notify the DEPARTMENT in writing of its intention to make claim for such extra compensation before beginning such work. Failure on the part of the CONSULTANT to give such notification will constitute a waiver of the claim for such extra compensation. The filing of such notice by the CONSULTANT will not be construed to establish the validity of the claim.
20. When delays are caused by circumstances or conditions beyond the control of the CONSULTANT, as determined by the DEPARTMENT, the CONSULTANT may be granted an extension of time, as set forth in Section 45. Such extension will not operate as a waiver by the DEPARTMENT of any of its rights herein set forth.

21. In the event that an audit performed by or on behalf of the DEPARTMENT indicates an adjustment to the costs reported under this Contract or questions the allowability of an item of expense, the DEPARTMENT will promptly submit to the CONSULTANT a Notice of Audit Results and a copy of the audit report, which may supplement or modify any tentative findings verbally communicated to the CONSULTANT at the completion of an audit.

Within sixty (60) days after the date of the Notice of Audit Results, the CONSULTANT will (a) respond in writing to the responsible Bureau of the DEPARTMENT indicating whether or not it concurs with the audit report, (b) clearly explain the nature and basis for any disagreement as to a disallowed item of expense, and (c) submit to the DEPARTMENT a written explanation as to any questioned or no opinion expressed item of expense, hereinafter referred to as the "RESPONSE." The RESPONSE will be clearly stated and will provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, the CONSULTANT may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by the DEPARTMENT. The RESPONSE will refer to and apply the language of the contract. The CONSULTANT agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes the DEPARTMENT to finally disallow any items of questioned or no opinion expressed cost.

The DEPARTMENT will make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of Audit Results. If the DEPARTMENT determines that an overpayment has been made to the CONSULTANT, the CONSULTANT will repay that amount to the DEPARTMENT or reach agreement with the DEPARTMENT on a repayment schedule within thirty (30) days after the date of an invoice from the DEPARTMENT. If the CONSULTANT fails to repay the overpayment or reach agreement with the DEPARTMENT on a repayment schedule within the thirty (30) day period, the CONSULTANT agrees that the DEPARTMENT will deduct all or a portion of the overpayment from any funds then or thereafter payable by the DEPARTMENT to the CONSULTANT under this Contract or any other agreement or payable to the CONSULTANT under the terms of 1951 PA 51, as applicable. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by the DEPARTMENT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The CONSULTANT expressly consents to this withholding or

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offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest the DEPARTMENT's decision only as to any item of expense the disallowance of which was disputed by the CONSULTANT in a timely filed RESPONSE.

22. The DEPARTMENT may terminate this Contract for convenience or cause, as set forth below, before the SERVICES are completed. Written notice of termination will be sent to

the CONSULTANT. The CONSULTANT will be reimbursed in accordance with the following:

a. **Termination for Convenience:**

If the DEPARTMENT terminates this Contract for convenience, the DEPARTMENT will give the CONSULTANT written notice of such termination thirty (30) days prior to the date of such termination, and the CONSULTANT will be reimbursed for all costs incurred up to receipt of said Notice of Termination. Such reimbursement will be as set forth in Section 15. The CONSULTANT will be reimbursed a proportionate share of the fixed fee based on the portion of the project that is complete as determined by the DEPARTMENT. The DEPARTMENT will receive the work product produced by the CONSULTANT under this Contract up to the time of termination, prior to the CONSULTANT being reimbursed. In no case will the compensation paid to the CONSULTANT for partial completion of SERVICES exceed the amount the CONSULTANT would have received had the SERVICES been completed.

b. **Termination for Cause:**

In the event the CONSULTANT fails to complete any of the SERVICES in a manner satisfactory to the DEPARTMENT, the DEPARTMENT may terminate this Contract. Written notice of termination will be sent to the CONSULTANT. The CONSULTANT will be reimbursed as follows:

The CONSULTANT will be reimbursed for SERVICES completed up to receipt of said Notice of Termination. The DEPARTMENT may pay a proportional share for the work product. The value of such partially completed work product will be determined by the DEPARTMENT based on actual costs incurred up to the estimated value of the work product received by the DEPARTMENT, as determined by the DEPARTMENT. Such actual costs will be as set forth in Section 15. The CONSULTANT will be reimbursed a proportionate share of the fixed fee based on the portion of the project that is complete, as determined by the DEPARTMENT. The DEPARTMENT will receive the work product produced by the CONSULTANT under this Contract up to the time of termination, prior to the

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CONSULTANT being reimbursed. In no case will the compensation paid to the CONSULTANT for partial completion of the SERVICES exceed the amount the CONSULTANT would have received had the SERVICES been completed.

In the event that termination by the DEPARTMENT is necessitated by any wrongful breach, failure, default, or omission by the CONSULTANT, the DEPARTMENT will be entitled to pursue whatever remedy is available to it,

including, but not limited to, withholding funds or off-setting against funds owed to the CONSULTANT under this Contract, as well as any other existing or future contracts between the CONSULTANT and the DEPARTMENT, for any and all damages and costs incurred or sustained by the DEPARTMENT as a result of its termination of this Contract due to the wrongful breach, failure, default, or omission by the CONSULTANT. In the event of termination of this Contract, the DEPARTMENT may procure the professional SERVICES from other sources and hold the CONSULTANT responsible for any damages or excess costs occasioned thereby.

23. All documents prepared by the CONSULTANT are the property of the DEPARTMENT and cannot be furnished to any party without the permission of the DEPARTMENT, except to the involved governmental agencies and commissions as part of the progress reporting process and except as provided in and limited in Section 33 herein.
24. No portion of the SERVICES, as herein defined, will be sublet except with the prior written consent of the DEPARTMENT and the FHWA. Consent to sublet any portion of the SERVICES will not be construed to relieve the CONSULTANT of any responsibility or obligation under or for the fulfillment of this Contract. All contracts, including amendments with subconsultants, including those named below, in excess of Twenty-Five Thousand Dollars (\$25,000.00) will be submitted to the DEPARTMENT and the FHWA for approval prior to award and will contain all applicable provisions of this Contract. Any such approvals will not be construed as a warranty of the subcontractor's qualifications, professional standing, ability to perform the work being subcontracted, or financial integrity.

The following named subconsultant(s), as set forth in Exhibit A, will perform portions of the SERVICES:

25. No portion of the SERVICES, as herein defined, will be assigned.
26. The CONSULTANT agrees to pay each subcontractor for the satisfactory

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completion of work associated with the subcontract no later than ten (10) calendar days from the receipt of each payment the CONSULTANT receives from the DEPARTMENT. The CONSULTANT agrees further to return retainage payments to each subcontractor within ten (10) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement from these time frames may occur only upon receipt of written approval from the

DEPARTMENT. These requirements are also applicable to all sub-tier subcontractors and will be made a part of all subcontract agreements.

This prompt payment provision is a requirement of 49 CFR, Part 26.29, and does not confer third-party beneficiary right or other direct right to a subcontractor against the DEPARTMENT. This provision applies to both Disadvantaged Business Enterprise (DBE) and non-DBE subcontractors.

The CONSULTANT further agrees that it will comply with 49 CFR, Part 26.37, and will report any and all DBE subcontractor payments to the DEPARTMENT with each billing and within twenty (20) days of the receipt of final payment for services performed under this Contract in the format set forth in Appendix G, dated June 1, 2001, attached hereto and made a part hereof, or any other format acceptable to the DEPARTMENT.

27. All questions that may arise as to the quality and acceptability of work, the manner of performance and rate of progress of the work, the interpretation of designs and specifications, and the satisfactory and acceptable fulfillment of the terms of this Contract will be decided by the DEPARTMENT.
28. With regard to non-discrimination requirements,
 - a. In connection with the performance of SERVICES under this Contract, the CONSULTANT (hereinafter in Appendix A referred to as the "contractor") agrees to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts" as set forth in Appendix A, dated March 1998, attached hereto and made a part hereof. This provision will be included in all subcontracts relating to this Contract.
 - b. During the performance of this Contract, the CONSULTANT, for itself, its assignees, and its successors in interest (hereinafter in Appendix B referred to as the "contractor") agrees to comply with the Civil Rights Act of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6, and the Regulations of the Department of Transportation (49 CFR Part 21) issued pursuant to said Act, including Appendix

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B, dated March 1992, attached hereto and made a part hereof. This provision will be included in all subcontracts relating to this Contract.

29. The CONSULTANT will carry out the applicable requirements of the DEPARTMENT's Disadvantaged Business Enterprise (DBE) program and 49 CFR Part 26, including, but not limited to, those requirements set forth in Appendix C, attached hereto and made a part hereof.

30. The CONSULTANT warrants that it has not employed or retained any company or person other than bona fide employees working solely for the CONSULTANT to solicit or secure this Contract and that it has not paid or agreed to pay any company or person, other than bona fide employees working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the DEPARTMENT will have the right to annul this Contract without liability or, at its discretion, to deduct from the contract price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
31. The CONSULTANT specifically agrees that in the performance of the SERVICES herein enumerated, by itself, or by an approved subcontractor, or by anyone acting on its behalf, it will comply with any and all State, Federal, and local statutes, ordinances, and regulations and will obtain all permits that are applicable to the entry into and the performance of this Contract.
32. If the DEPARTMENT does not wish to subscribe to the findings or conclusions of the SERVICES, the following statement will be added to the credit line of all reports published by the CONSULTANT or by the DEPARTMENT:

“The opinions, findings, and conclusions expressed in this publication are those of the authors and not necessarily those of the Michigan State Transportation Commission or the Michigan Department of Transportation or the Federal Highway Administration.”

33. It is agreed that the CONSULTANT will not copyright any papers, reports, forms, or other materials that are part of its work under this Contract without the prior written approval of the DEPARTMENT.
34. In addition to the protection afforded by any policy of insurance, the CONSULTANT agrees to indemnify and save harmless the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT, the FHWA, and all officers, agents,

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and employees thereof:

- a. From any and all claims by persons, firms, or corporations for labor, services, materials, or supplies provided to the CONSULTANT in connection with the CONSULTANT's performance of the SERVICES, and

- b. From any and all claims for injuries to or death of any and all persons, for loss of or damage to property, for environmental damage, degradation, response and cleanup costs, and for attorney fees and related costs arising out of, under, or by reason of the CONSULTANT's performance of the SERVICES under this Contract, except claims resulting from the sole negligence or willful acts or omissions of said indemnitee, its agents, or its employees.

The DEPARTMENT will not be subject to any obligations or liabilities by contractors of the CONSULTANT or their subcontractors or any other person not a party to the contract without its specific consent and notwithstanding its concurrence with or approval of the award of any contract or subcontract or the solicitation thereof.

It is expressly understood and agreed that the CONSULTANT will take no action or conduct that arises either directly or indirectly out of its obligations, responsibilities, and duties under this Contract that results in claims being asserted against or judgments being imposed against the State of Michigan, the DEPARTMENT, the Michigan State Transportation Commission, and/or the FHWA, as applicable.

In the event that the same occurs, it will be considered as a breach of this Contract, thereby giving the State of Michigan, the DEPARTMENT, the Michigan State Transportation Commission, and/or the FHWA, as applicable, a right to seek and obtain any necessary relief or remedy, including, but not limited to, a judgment for money damages.

- 35. In accordance with 1980 PA 278, MCL 423.321 et seq; MSA 17.458(22) et seq, the CONSULTANT, in the performance of this Contract, will not enter into a contract with a subcontractor, manufacturer, or supplier listed in the register maintained by the State of Michigan, Department of Labor, of employers who have been found in contempt of court by a Federal court of appeals on not less than three (3) occasions involving different violations during the preceding seven (7) years for failure to correct an unfair labor practice, as prohibited by Section 8 of Chapter 372 of the National Labor Relations Act, 29 U.S.C. 158. The DEPARTMENT may void this Contract if the name of the CONSULTANT or the name of a subcontractor, manufacturer, or supplier utilized by the CONSULTANT in the performance of this Contract subsequently appears in the register

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during the performance of this Contract.

- 36. For all contracts in excess of One Hundred Thousand Dollars (\$100,000.00), the CONSULTANT certifies to the best of its knowledge and belief that:
 - a. No Federal appropriated funds have been paid or will be paid by or on behalf of the CONSULTANT to any person for influencing or attempting to influence an

officer or employee of any agency, a member of Congress, an officer or employee of any agency, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Contract, the CONSULTANT will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The CONSULTANT will require that the language of this certification be included in the award documents for all third-party contracts (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients will certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000.00) and not more than One Hundred Thousand Dollars (\$100,000.00) for each such failure.

- 37. The CONSULTANT's signature on this Contract constitutes the CONSULTANT's certification of "status" under penalty of perjury under the laws of the United States in respect to 49 CFR Part 29 pursuant to Executive Order 12549.

The certification that is included as a part of this Contract as Attachment A is Appendix A of 49 CFR Part 29 and applies to the CONSULTANT (referred to in Appendix A as "the prospective primary participant").

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The CONSULTANT is responsible for obtaining the same certification from all subcontractors under this Contract by inserting the following paragraph in all subcontracts:

"The subcontractor's signature on this Contract constitutes the subcontractor's certification of 'status' under penalty of perjury under the laws of the United States in respect to 49 CFR Part 29 pursuant to

Executive Order 12549. The certification included as a part of this Contract as Attachment B is Appendix B of 49 CFR Part 29.”

This certification is required of all subcontractors, testing laboratories, and other lower tier participants with which the CONSULTANT enters into written arrangements for the procurement of goods and services provided for in this Contract.

38. For contracts in excess of One Hundred Thousand Dollars (\$100,000.00):
- a. The CONSULTANT stipulates that any facility to be utilized in the performance of this Contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 7401 et seq., as amended, including Pub. L. 101-549), and/or under the Clean Water Act, as amended (33 U.S.C. 1251 et seq., as amended, including Pub. L. 100-4), and/or under Executive Order 11738 and regulations in implementation thereof (40 CFR Part 15), is not listed on the date of contract award on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
 - b. The CONSULTANT agrees to comply with all the requirements of the Clean Air Act and the Clean Water Act and all regulations and guidelines listed thereunder related to the CONSULTANT and services under this Contract.
 - c. The CONSULTANT will promptly notify the DEPARTMENT and the U.S. EPA, Assistant Administrator for Enforcement, of the receipt of any communication from the Director, the Office of Federal Activities, or the EPA indicating that a facility to be utilized for this Contract is under consideration to be listed on the EPA List of Violating Facilities.
 - d. The CONSULTANT agrees to include or cause to be included the requirements of the preceding three paragraphs (a), (b), and (c) in every nonexempt subcontract.
39. The CONSULTANT agrees that no otherwise qualified individual with disabilities in the United States, as defined in Section 1630.2 of the Americans with Disabilities Act, Title 42 U.S.C. 12101, will, solely by reason of his/her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving benefits under this Contract.
40. Any change in scope or character of the SERVICES, cost, compensation, or term of this Contract will be by award of a prior written amendment to this Contract by the parties.

41. The CONSULTANT agrees that it will not volunteer, offer, or sell its services to any litigant against the DEPARTMENT with respect to any SERVICES it has agreed to perform for the DEPARTMENT under this Contract, provided that this provision will not apply either when the CONSULTANT is issued a valid subpoena to testify in a judicial or administrative proceeding or when the enforcement of this provision would cause the CONSULTANT to be in violation of any Michigan or Federal law.
42. Any approvals, acceptances, reviews, and inspections of any nature by the DEPARTMENT will not be construed as a warranty or assumption of liability on the part of the DEPARTMENT. It is expressly understood and agreed that any such approvals, acceptances, reviews, and inspections are for the sole and exclusive purposes of the DEPARTMENT, which is acting in a governmental capacity under this Contract, and that such approvals, acceptances, reviews, and inspections are a governmental function incidental to the SERVICES under this Contract.

Any such approvals, acceptances, reviews, and inspections by the DEPARTMENT will not relieve the CONSULTANT of its obligations hereunder, nor are such approvals, acceptances, reviews, and inspections by the DEPARTMENT to be construed as a warranty as to the propriety of the CONSULTANT's performance but are undertaken for the sole use and information of the DEPARTMENT.

43. With regard to claims based on goods or services that were used to meet the CONSULTANT's obligation to the DEPARTMENT under this Contract, the CONSULTANT hereby irrevocably assigns its right to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or the DEPARTMENT due to any violation of 15 USC, Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - .788, excluding Section 4a, to the State of Michigan or the DEPARTMENT.

The CONSULTANT will require any subcontractors to irrevocably assign their rights to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or the DEPARTMENT with regard to claims based on goods or services that were used to meet the CONSULTANT's obligation to the DEPARTMENT under this Contract due to any violation of 15 USC, Sections 1 - 15, and/or 1984 PA 274, MCL 445.771 - .788, excluding Section 4a, to the State of Michigan or the DEPARTMENT as

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a third-party beneficiary.

The CONSULTANT will notify the DEPARTMENT if it becomes aware that an antitrust violation with regard to claims based on goods or services that were used to meet the CONSULTANT's obligation to the DEPARTMENT under this Contract may have occurred or is threatened to occur. The CONSULTANT will also notify the DEPARTMENT if it becomes aware of any person's intent to commence, or of

commencement of, an antitrust action with regard to claims based on goods or services that were used to meet the CONSULTANT's obligation to the DEPARTMENT under this Contract.

44. This Contract will be in effect from through . Costs incurred outside of the term of this Contract will not be eligible for reimbursement.
45. Prior to expiration, the time for completion of performance under this Contract may be extended by the DEPARTMENT upon written request and justification from the CONSULTANT. Upon approval and authorization by the DEPARTMENT, a written time extension amendment will be prepared and issued by the DEPARTMENT. Any such extension will not operate as a waiver by the DEPARTMENT of any of its rights herein set forth.
46. In case of any discrepancies between the body of this Contract and any Exhibits hereto, the body of this Contract will govern.
47. This Contract will become binding on the parties and of full force and effect upon signing by the duly authorized representatives of the CONSULTANT and of the DEPARTMENT and upon adoption of a resolution approving said Contract and authorizing the signature(s) thereto of the respective representative(s) of the CONSULTANT, a certified copy of which resolution will be sent to the DEPARTMENT with this Contract, as applicable.

IN WITNESS WHEREOF, the parties have caused this Contract to be awarded.

By: _____

16

Title:

By: _____

Title:

MICHIGAN DEPARTMENT OF TRANSPORTATION

By: _____
Title: Department Director

SAMPLE

SAMPLE

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SAMPLE

APPENDIX G

June 1, 2001

Prime Consultant Statement of DBE Subconsultant Payments

Information required in accordance with 49 CFR §26.37 to monitor progress of the prime consultant in meeting contractual obligations to DBEs.

PRIME CONSULTANT:			QCHECK IF PRIME IS MDOT-DBE CERTIFIED		AUTHORIZATION NO.		CONTRACT NO.	
BILLING PERIOD:					Q Check if Final Payment		JOB NO.	
CERTIFIED DBE CONSULTANT	SERVICES WORK PERFORMED	TOTAL CONTRACT AMOUNT	CUMULATIVE DOLLAR VALUE OF SERVICES COMPLETED	DEDUCTIONS	ACTUAL AMOUNT PAID TO DATE	ACTUAL AMOUNT PAID DURING THIS BILLING PERIOD	DBE AUTHORIZED SIGNATURE (Final Payment Report Only)	DATE

As the authorized representative of the above prime consultant, I state that, to the best of my knowledge, this information is true and accurate.

PRIME CONSULTANT'S AUTHORIZED REPRESENTATIVE (SIGNATURE):	TITLE	DATE
FOR MDOT USE ONLY		

COMMENTS:

CONTRACT ADMINISTRATOR (Signature)	DATE:
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Special note: "Prime Consultant or Authorized Representative" refers to recipients of federal funds as defined at 49 Code of Federal Regulations Part 26.

INSTRUCTIONS

This statement reports the actual dollar amounts of the project cost earned by and paid to DBE subconsultants. Complete and submit to the Contract Administrator with each billing and within 20 days of receipt of final payment. Some forms may be blank if no payment was made since the previous billing.

For “Authorization No., Contract No.,” and “Job No.” as appropriate, use the numbers assigned by MDOT.

For “Billing Period,” report the calendar days covered by the billing.

For “Services Work Performed” report the main service performed by the subconsultant during the reporting period.

For “Total Contract Amount” report the total amount of the contract between the prime consultant and subconsultant.

For “Cumulative Dollar Value of Services Completed” report the total amount the subconsultant has earned since beginning the project.

For “Deductions,” report deductions made by the prime consultant to the subconsultant’s “Cumulative Dollar Value of Services Completed” for retainage, bond or other fees, materials, services or equipment provided to the subconsultant according to mutual, prior agreement (documentation of such agreement may be required by MDOT).

For “Actual Amount Paid to Date,” report cumulative actual payments made to the subconsultant for services completed.

For “Actual Amount Paid During this Billing Period” report actual payments made to the subcontractor for services during this billing period.

Provide “DBE Authorized Signature” for final payment only.

Be sure to sign, title and date this statement.

MDOT CONTRACT ADMINISTRATOR:

Complete “Comments” if necessary, sign, date and forward to the Office of Equal Opportunity within seven (7) days of receipt.